



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-002864

First-tier Tribunal Nos: EU/56027/2023  
LE/01262/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 05 November 2024**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**Faisa Kasim Ahmed  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr A Slater, instructed by Forward & Yussuf (apparently)

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**Heard at Field House on 27 September 2024**

**DECISION AND REASONS**

1. The appellant made an application as a litigant in person for permission to appeal the decision of First-tier Tribunal Judge Roblin, who heard the appeal on 28<sup>th</sup> March 2024 by CVP and promulgated a decision on 30<sup>th</sup> March 2024. The applicant was a litigant in person. The judge dismissed the appeal on the basis that he was not satisfied, on the evidence available, that the appellant was a family member of a relevant EEA citizen and did not meet the requirements of the EU Settlement Scheme (EUSS family permit).
2. The appellant had set out that she was the spouse of a relevant EEA citizen and provided a marriage certificate dated 30<sup>th</sup> December 2020 and issued on 2<sup>nd</sup> April 2023. The appellant and sponsor were interviewed separately on 25<sup>th</sup> September 2023. The Entry Clearance Officer refused the application on 6<sup>th</sup> October 2023 not least on the basis of a significant inconsistencies between the appellant and his sponsor's account when they were interviewed. It was stated that the

marriage was one of convenience and entered into as a means to circumvent the requirements for lawful entry to the UK.

### **The Grounds for Permission to Appeal**

3. The grounds pleaded extenuating circumstances on the basis that it was difficult to obtain a legal representative but added that the success of the appeal was in the interests of justice on the basis of procedural errors and findings which did not correlate with the appellant's and sponsor's relationship. The First-tier Tribunal had found that the marriage occurred on 30<sup>th</sup> December 2022 when in fact the marriage was conducted on 30<sup>th</sup> December 2020 and existed before 31<sup>st</sup> December 2020. The evidence relating to this marriage was provided and reliance placed on an interview conducted by the Home Office but this interview looked into aspects which could easily have been forgotten by the sponsor who did not have a recollection of different events established in the interview.
4. It was submitted that the marriage was genuine and subsisting and the appellant had gone through tragic events with family relatives. The Tribunal had put little credibility on the sponsor being in the United Kingdom at the date of application and had placed limited credibility "in the sponsor requesting the appellant to join him in the United Kingdom".
5. Permission to appeal was granted on the basis effectively that the appellant was unrepresented and thus a **Robinson** obvious point was considered. The judge was concerned that the First-tier Tribunal may have erred at [27] to [35] in conflating two separate issues, whether there was a genuine marriage or whether the marriage was one of convenience. The self-direction on the burden of proof was also considered arguably an error because where the respondent alleged a marriage of convenience the burden was on them to prove as much on the balance.
6. The judge granting permission was satisfied, however, that Judge Roblin's reference to the marriage certificate in this case being issued in December 2022, when it was in fact December 2020, was merely a typographical error.

### **The Hearing**

7. At the hearing and despite no solicitor being placed on record, Mr Alex Slater appeared, having been instructed by solicitors Forward & Yussuf. I pointed out that the grant of permission identified that the appellant was unrepresented and no solicitors had put themselves on record but I nonetheless permitted Mr Slater to make submissions.
8. Mr Slater submitted that the judge erred when he considered that there was a shifting burden of proof because there was no such 'shifting'. The legal burden always rested with the respondent in this type of appeal. Further, the judge was confused as to whether there was a genuine marriage or a marriage of convenience. There was no self direction by the judge in relation to a marriage of convenience, which was a term of art. The application was refused on the basis it was a marriage of convenience. The judge was confused between two legally distinct issues. As indicated by **Rosa [2016] EWCA Civ 14** at [19] the burden was not discharged by showing reasonable suspicion.
9. Mr Tufan submitted the legal burden was on the Secretary of State and that was accepted but pointed to the finding of the judge that both the appellant and

sponsor gave discrepant answers in their interview. The issue here was a marriage of convenience and the judge did refer to this at [3] and set out correctly the issues in dispute at [5].

10. The judge was correct at [10] where he properly directed himself legally and the word 'genuineness' was mentioned but the judge had clearly in his mind whether this constituted a marriage of convenience and further a marriage of convenience is tantamount to not being a genuine marriage. The judge did cite from **Sadovska [2017] UKSC 54**. The judge obviously knew what his task was and considered all the evidence and was entitled to find that this was indeed a marriage of convenience and also not genuine. Those two concepts were not necessarily mutually exclusive. As the judge pointed out at [35] there were clearly too many inconsistencies in the interview between the appellant and his sponsor.

### **Analysis**

11. As the judge points out at [2] the appellant claimed to be the spouse of an EEA citizen and provided a marriage certificate dated 30 December 2020 (at [17] the judge referenced 2022 but as noted in the PTA grant this was merely a typographical error) and issued on 2<sup>nd</sup> April 2023. The appellant and sponsor were invited for an interview via MS Teams on 25<sup>th</sup> September 2023 and critically, based on the inconsistencies during the interview, it was the respondent's position that there were reasonable grounds to conclude that the marriage undertaken was one of convenience.
12. The judge was wholly clear as to the content of the respondent's reasons for refusal letter which refused the application on the basis that the marriage undertaken was one of convenience. At paragraph 5 the judge set out that the issues in dispute were:
- (a) whether the marriage was one of convenience?
  - (b) was the sponsor in the UK at the date of the application.
13. At [11] and [12] the judge set out the case of **Sadovska v the Secretary of State for the Home Department [2017] UKSC 54** citing:

*"12. '28. ... Furthermore, although the Regulations permit the respondent to take steps on the basis of reasonable grounds to suspect that that is the case, Ms Sadovska is entitled to an appeal where the facts and circumstances must be fully investigated. That must mean, as held in Papajorgji, that the tribunal has to form its own view of the facts from the evidence presented. The respondent is seeking to take away established rights. One of the most basic rules of litigation is that he who asserts must prove. It was not for Ms Sadovska to establish that the relationship was a genuine and lasting one. It was for the respondent to establish that it was indeed a marriage of convenience."*

14. The judge was also clear that the *legal* burden lay with the Secretary of State throughout but the *evidential* burden may shift as per **Papajorgji (EEA Spouse - Marriage of Convenience) Greece [2012] UKUT 00038** and approved in **Rosa v Secretary of State for the Home Department [2016] EWCA Civ 14**. I note in **Sadovska** the terms of the 'relationship' being 'genuine' and 'marriage of convenience' were used interchangeably.

15. The judge set out the background to the appeal that the appellant was a Somali national born in 1990 and the sponsor a citizen of Norway had pre-settled status under the EU Settlement Scheme. The sponsor has five children with his former wife in Norway and before the interview he visited his children for two months and returned to the UK a month before the interview.
16. At [17] the judge noted that the sponsor could not recollect when he moved into the property, did not have a copy of the rental agreement and provided Monzo bank statements but did not provide any bank statements for May 2023, the month in which the appellant submitted the application and the sponsor was unable to provide an explanation. The judge also noted that albeit the governing or issuing office of the certificate of marriage conducted in December 2020 was said not to be able to be provided because of COVID, the sponsor himself had explained that there were no restrictions due to COVID and no guidelines in place as to people meeting in relation to the ceremony itself [17].
17. From [18] onwards the judge identified that although when the couple were interviewed by the Home Office and said to be married for 3 years, the appellant was not even aware that the sponsor had any children, did not know who they were and the explanation was merely that she was confused. There was a different version between the appellant and sponsor as to how they met and overall at [20] the judge did not find the sponsor's evidence credible, or that the appellant would simply have forgotten if the sponsor had told her he had five children. The judge also rejected the evidence that the appellant had not registered the marriage certificate between 30<sup>th</sup> December 2020 and 2<sup>nd</sup> April 2023, even allowing for the pandemic. The appellant and sponsor's evidence was found to be contradictory.
18. For a variety of sound and fundamental reasons, the judge did not accept the credibility of the appellant or the sponsor. Having made those findings at [27] onwards the judge proceeded to consider whether the marriage was one of convenience. It was clear that the judge found the legal burden to rest with the respondent to demonstrate on balance that there was foundation to the proper suspicion for them to make such assertion. The judge relied on his findings of fact in relation to the sponsor lacking credibility and stated as follows at [28]:

*"28. I find the Sponsor was not a credible witness. I bring forward my findings of fact. There are too many contradictions, conflicting evidence and inconsistencies and, to that extent, I find the Respondent has demonstrated that, on balance, there is proper suspicion for the Respondent to assert this is not a genuine marriage."*
19. The judge found the interview was not exceptionally long and whilst there may have been some confusion, did not accept that the appellant would be confused to the extent that she provided such "conflicting and contradictory evidence".
20. In sum, the judge found at [35] the following:

'Accordingly, I find that there is overwhelming evidence that the marriage is one of convenience as there are too many inconsistencies and contradictions. Accordingly, I am not satisfied there exists a genuine and subsisting marriage.'
21. Having noted the citation from **Sadovska** at [28] where the Supreme Court stated: "It was not for Ms Sadovska to establish that the relationship was a

*genuine and lasting one. It was for the respondent to establish that it was indeed a marriage of convenience”* it is not arguable that the judge misdirected himself. As noted above the Supreme Court used the references of genuine marriage and a marriage of convenience in the same sentence. Clearly, those two terms are not mutually exclusive and although a marriage of convenience may indeed become a genuine one, which could perhaps cure the defect of a marriage of convenience, the fact is that this marriage was both a marriage of convenience, as found by the judge, and also not genuine. It was open to the judge to make findings on whether the relationship was genuine in order to conclude as to whether it was a marriage of convenience and that is exactly what the judge did. Accordingly the judge found that the appellant was a not a family member of a relevant EEA citizen and did not meet the requirements of the EU Settlement Scheme (EUSS family permit) for sound and adequate reasons.

22. As an addendum and not necessarily relevant to my findings I note, additionally, that the judge found the appellant’s sponsor was not even in the UK at the relevant time, which was also an issue which would undermine the appeal’s success.
23. I thus find there was no material error of law in the decision and the decision shall stand. The appellant’s appeal remains dismissed.

**Helen Rimington**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4<sup>th</sup> November 2024**